Table of Contents

IAB# IV 2326158

MISCELLANEOUS DOCUMENTS:

- Los Angeles County District Attorney Charge Evaluation Worksheet dated 1/24/14
- Admonition forms
- Los Angeles County Sheriff's Department Watch Commander Service Comment Report, Number 223602

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY

CASE NUMBER:	**IV 2326158**
COMPLAINANT:	[redacted]
SUBJECT:	**Humberto Loza, Deputy,** [redacted]
STATION/UNIT/BUREAU:	**Palmdale Station/ North Patrol Division/ Patrol Operations**
DATE/TIME/DAY:	**December 5, 2012, 1940 hours, Wednesday**
LOCATION:	**39700 30th Street West, Palmdale, CA, 93551 "Marie Kerr Park"**

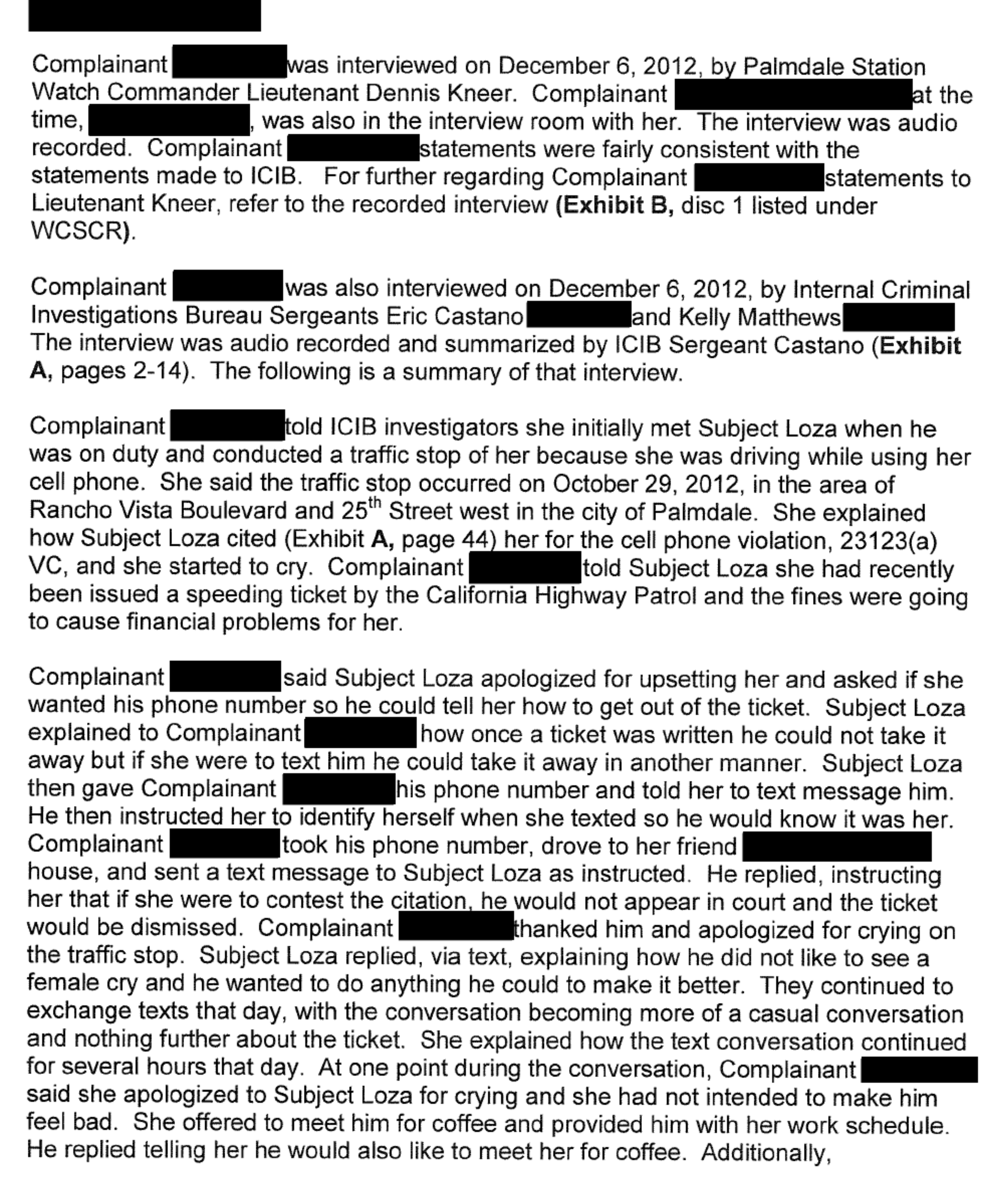
On December 6, 2012, at approximately 0300 hours Complainant [redacted] reported to the Palmdale Watch Commander that Subject Humberto Loza, while off-duty, had sexually assaulted her several hours prior on December 5, 2012. Palmdale Station Lieutenant Dennis Kneer immediately conducted a preliminary inquiry and determined [redacted] allegations warranted a criminal investigation. At the request of Palmdale Station Captain Bobby Denham, Internal Criminal Investigations Bureau (ICIB) was contacted and a formal criminal investigation into the allegation of sexual assault was immediately conducted by ICIB.

On September 11, 2013, Internal Criminal Investigations Bureau Sergeant Eric Castano submitted the facts of the sexual assault case to the Los Angeles County District Attorney Justice System Integrity Division (JSID) for consideration of filing criminal charges.

On January 24, 2014, the Los Angeles County District Attorney Office-JSID completed their review of Subject Loza's case and declined to file charges based on lack of sufficient evidence. For further regarding the declination to file charges refer to the Los Angeles County District Attorney Charge Evaluation Worksheet submitted with this case under **Miscellaneous Documents**.

The following narratives are intended only as a synopsis of the interviews. Additional information and precise wording may be obtained by reviewing the recorded interviews and verbatim transcriptions.

COMPLAINANT



[redacted]

Complainant [redacted] was interviewed on December 6, 2012, by Palmdale Station Watch Commander Lieutenant Dennis Kneer. Complainant [redacted] at the time, [redacted], was also in the interview room with her. The interview was audio recorded. Complainant [redacted] statements were fairly consistent with the statements made to ICIB. For further regarding Complainant [redacted] statements to Lieutenant Kneer, refer to the recorded interview **(Exhibit B,** disc 1 listed under WCSCR**)**.

Complainant [redacted] was also interviewed on December 6, 2012, by Internal Criminal Investigations Bureau Sergeants Eric Castano [redacted] and Kelly Matthews [redacted] The interview was audio recorded and summarized by ICIB Sergeant Castano (**Exhibit A,** pages 2-14). The following is a summary of that interview.

Complainant [redacted] told ICIB investigators she initially met Subject Loza when he was on duty and conducted a traffic stop of her because she was driving while using her cell phone. She said the traffic stop occurred on October 29, 2012, in the area of Rancho Vista Boulevard and 25th Street west in the city of Palmdale. She explained how Subject Loza cited (Exhibit **A,** page 44) her for the cell phone violation, 23123(a) VC, and she started to cry. Complainant [redacted] told Subject Loza she had recently been issued a speeding ticket by the California Highway Patrol and the fines were going to cause financial problems for her.

Complainant [redacted] said Subject Loza apologized for upsetting her and asked if she wanted his phone number so he could tell her how to get out of the ticket. Subject Loza explained to Complainant [redacted] how once a ticket was written he could not take it away but if she were to text him he could take it away in another manner. Subject Loza then gave Complainant [redacted] his phone number and told her to text message him. He then instructed her to identify herself when she texted so he would know it was her. Complainant [redacted] took his phone number, drove to her friend [redacted] house, and sent a text message to Subject Loza as instructed. He replied, instructing her that if she were to contest the citation, he would not appear in court and the ticket would be dismissed. Complainant [redacted] thanked him and apologized for crying on the traffic stop. Subject Loza replied, via text, explaining how he did not like to see a female cry and he wanted to do anything he could to make it better. They continued to exchange texts that day, with the conversation becoming more of a casual conversation and nothing further about the ticket. She explained how the text conversation continued for several hours that day. At one point during the conversation, Complainant [redacted] said she apologized to Subject Loza for crying and she had not intended to make him feel bad. She offered to meet him for coffee and provided him with her work schedule. He replied telling her he would also like to meet her for coffee. Additionally,

Complainant [redacted] had asked Subject Loza to send her a picture of him so she could attach it to the photo ID on her cell phone. Subject Loza agreed but asked Complainant [redacted] to send a photograph of her to him first. She complied and sent a picture of her face from the chin up. Subject Loza sent her a picture of himself standing up wearing civilian clothing.

Complainant [redacted] said during the traffic stop Subject Loza was professional with her. However, once they exchanged several texts she believed he was trying to start a relationship with her. She explained her reason for asking Subject Loza out for coffee was both to strike up a personal friendly relationship with him and to get rid of the ticket. She said her intentions were to be friends only and nothing more as she was not attracted to him.

Complainant [redacted] said the texting conversation between her and Subject Loza continued the day after the traffic stop and up until they met at Marie Kerr Park on December 4, 2012. She explained how Subject Loza would text her multiple times a day during that time frame to the point where she became annoyed but maintained contact with him as she felt he was becoming a shoulder to cry on.

Complainant [redacted] said on several occasions Subject Loza asked to meet with her and suggested meeting at a park where they could cuddle. She declined the offer. She described how Subject Loza would constantly ask her to meet with him even if it was only going to be for a few minutes. She denied him each time. Approximately two weeks after the texting began Subject Loza started to steer the conversations into those with sexual undertones. She was unable to remember specific examples of what he said which led her to believe they were sexually charged text. She explained how their texts could be interpreted as playful and teasing and although she did text him a message indicating she was entertaining the idea of having sexual contact with him she never had any intention of actually having sex with Subject Loza. Complainant [redacted] said at one point in the month of November 2012, she had sent Subject Loza a picture of herself with upper body nudity.

IAB Note: ICIB Investigator Sergeant Castano obtained a copy of a photograph (**Exhibit C**) that was exchanged between Complainant [redacted] and Subject Loza's cellular telephones. The photograph depicts Complainant [redacted] in lingerie.

On December 4, 2012, Complainant [redacted] received a text from Subject Loza asking to meet with her. She again denied his request. The next day December 5, 2012, she had planned to meet a male friend of hers named [redacted] When [redacted] cancelled their meeting, Complainant [redacted] text Subject Loza and asked to meet him at Marie Kerr Park in Palmdale. Subject Loza immediately replied and agreed to meet her. Refer to ICIB recorded video footage (**Exhibit B,** disc 2 approximately seven minutes into the video) of Complainant [redacted] cellular telephone text messages for further regarding their arrangement for a meeting at the park.

When Complainant [redacted] arrived at Marie Kerr Park she parked near the basketball courts and Subject Loza text her he was on his way. At approximately 1930 hours Subject Loza arrived at the park and parked his Ford Expedition behind her, facing in the opposite direction. She walked to his vehicle, he exited, and Complainant [redacted] gave him a hug. They both entered his Expedition and she sat in the front passenger seat while Subject Loza sat in the driver's seat. Subject Loza complained about the lights from across the street shinning in their eyes and suggested they move to a different parking spot. She agreed and he drove to the far north section of the parking lot. Subject Loza was off duty and not wearing a uniform at the time of the meeting.

Subject Loza parked near a baseball field and removed a gun from his waistband which he then placed inside the vehicle's center console. Subject Loza explained to Complainant [redacted] the gun was poking his stomach making him uncomfortable. Subject Loza then told Complainant [redacted] he wanted to kiss her and proceeded to do so. Complainant [redacted] said she kissed him back and he told her to put her seat in the reclined position, which she did. Subject Loza slid over the center console and positioned himself on top of Complainant [redacted] straddling her. As he lay on top of her he kissed her and moved his hands along her thighs and back. He proceeded to place his right hand down the back of her pants, touching her buttocks. He unzipped her jacket and pulled up her shirt and bra, exposing her breasts. Complainant [redacted] tried to push him off of her while simultaneously telling him she had to go in order to get home on time. Subject Loza told her it was okay she would be home in time and he proceeded to bite and kiss her exposed breasts. Complainant [redacted] said she tried again to push him off but his body weight kept her in place. Subject Loza attempted to put his left hand down the inside front portion of her pants but she pushed it away and he instead "groped" (touched in a sexual manner) her through the outside of her pants. She added he had attempted to do that more than once and each time she pushed his hand away he would touch her in a sexual manner through the outside portion of the pants. Subject Loza continued to kiss her, moving from the breasts to her face while she continued to try pushing him off and telling him she had to go home.

As Subject Loza proceeded to place his hand down the front portion of Complainant [redacted] pants, he begged her to let him touch her. She denied him and continued to push his hand away. Subject Loza grabbed her hand and placed it on the genital area of his pants. Complainant [redacted] said she sort of moved her hand away and then he grabbed her hand and put it down the inside of his pants, under his boxers. She then placed her hand on his penis and stroked his penis in a manner which she described as a "hand job." Subject Loza asked if she wanted to move to the back seat of the Expedition and she declined. He then asked her if she wanted to go somewhere else to finish what they were doing and she again refused, while also trying to push him off.

Complainant [redacted] said she then received a text message from a friend and pretended it was important, telling Subject Loza she had to go. Subject Loza pulled himself off of her, she pulled down her shirt and bra, and he then laid his head on her breast. She told him she had to go, pushed him off, and Subject Loza got off of her. As Subject Loza was buttoning his pants he asked Complainant [redacted] to help him lace his belt through one of the belt loops on his pants. She agreed and helped him. He

then moved back to the driver's seat and drove them back to her car. They exited and he told her it was nice seeing her then gave her a hug and kiss.

Complainant [redacted] entered her vehicle, locked the doors, and call her friend [redacted] as she drove out of the parking lot. Complainant [redacted] told [redacted] what happened and continued to proceed to her house. When she arrived at [redacted] house she again told her what had occurred between her and Subject Loza. She then called her boyfriend of two weeks, [redacted] and told him what had happened. When [redacted] arrived at [redacted] house the three of them discussed what had occurred. During that same night Subject Loza sent Complainant [redacted] a text telling her it was good to see her and next time they meet she needed to finished the job because they really hurt. Complainant [redacted] interpreted "they" to mean Subject Loza's testicles. She said she believed his testicles hurt because he was unable to ejaculate due to the sexual encounter ending earlier then he wanted. She text him she hoped they hurt for the rest of his life and questioned how he could sleep with a guilty conscience.

Complainant [redacted] said she was uncertain whether to report what had occurred with Subject Loza and considered going home and not telling anyone else. Instead she and [redacted] went to a coffee shop. When they returned to [redacted] house, [redacted] mother convinced Complainant [redacted] to report the incident. Complainant [redacted] subsequently reported the incident to the Palmdale Sheriff Station Watch Commander.

When ICIB Investigators asked Complainant [redacted] clarifying questions about what occurred at the park with Subject Loza, she remembered when Subject Loza placed her hand on the outside genital portion of his pants she felt his penis was erect. She also remembered at the point when Subject Loza had guided her hand down his pants and onto his bare penis she grabbed his penis as he held onto her wrist. He moved her hand in a stroking motion on his penis and eventually let go of her wrist. She continued to stroke his penis for approximately thirty seconds. She then pulled her hand out from his pants and he tried to put it back in. He repeatedly kissed and bit her breasts, then kissed her lips rotating between each area. At some point he also kissed her bare stomach. Complainant [redacted] said the total time Subject Loza was on top of her was approximately ten minutes. She described how her feet were on the floorboard of the car and each time she tried to push her body upward from under him she was unsuccessful. She did say each time she tried to push him off she told him to get off of her and that she needed to go. She believed that would have been an indication to him she wanted to end their contact.

Complainant [redacted] remembered when Subject Loza was biting and sucking her nipples she felt pain but did not say anything to Subject Loza.

Complainant [redacted] explained the reason she picked the park to meet Subject Loza was because it was close to her job and Subject Loza had previously suggested meeting there. Once at the park, Complainant [redacted] thought she and Subject Loza would just sit on a bench and talk. She said the reason she hugged Subject Loza when he first arrived at the park was because it was a simple greeting.

Additionally, once Subject Loza initially kissed her she kissed him back because she thought that was all they were going to do and nothing more. She also explained the reason she continued to stroke his penis for thirty seconds was because she believed Subject Loza would have been sexually gratified which would have caused him to get off of her. She further explained when she was repeatedly trying to push him off, Subject Loza would respond by pushing his body weight down harder onto her. She described how she used all her strength to push him up and off of her but was unsuccessful. Complainant [redacted] believed the reason Subject Loza finally got off of her was because she had repeatedly told him she had to leave.

Complainant [redacted] said the fact Subject Loza was a Deputy Sheriff had no bearing on the incident and her only wish, whether he was a deputy sheriff or not, was that he would not have gone as far sexually, as he did. She added, she never felt Subject Loza's instruction to contest the citation was offered as a means to compel sexual favors from her.

Complainant [redacted] explained the reason she had not screamed, fought back, or called "911" was because she thought it would have been her word against Subject Loza's and he was a Deputy Sheriff. She described how she felt ashamed, stupid and naïve after this incident with Subject Loza. [redacted]

At the conclusion of the interview Complainant [redacted] agreed to help ICIB investigators by meeting with Subject Loza again in a controlled environment with a recording device. She also provided her cellular telephone for their review of the text messages. She explained she had deleted most of the initial text messages between her and Subject Loza because they were taking up to much space on her phone. The remaining messages begin on November 30, 2012.

Complainant [redacted] was transported by ICIB Investigators to Antelope Valley Hospital for a sexual assault exam (**Exhibit A,** pages 46-56). She was examined by Forensic Services Unit, Nurse Sylvia Fink ([redacted]. Deputy Jeffrey Collins [redacted] of Crime Scene Investigation Unit – Scientific Services Bureau photographed (**Exhibit A,** page 45 and **Exhibit B**, disc 3) the bite marks to Complainant [redacted] breast.

At approximately 0858 hours on December 6, 2012, Complainant [redacted] opened communication with Subject Loza at the direction of ICIB Investigators who effectively controlled Complainant [redacted] text messages and responses.

On December 12, 2012, at the direction of ICIB Investigators, Complainant [redacted] arranged a meeting with Subject Loza at a "Los Arcos" restaurant in Palmdale. The

meeting was surreptitiously monitored and recorded (**Exhibit B,** disc 1 listed as Key Fob 1) by ICIB. The following is a summary of that meeting.

Upon Subject Loza's arrival at the restaurant both he and Complainant [redacted] engaged in conversation. A few minutes later Subject Loza asked Complainant [redacted] what was on her mind. She asked him to clarify what she needed to do in regards to the citation he previously issued her. He explained how she needed to contest the citation, he would not appear in court and the ticket would be dismissed in the interest of justice.

Subject Loza told Complainant [redacted] she appeared bothered and asked her what was wrong. She explained she was upset about what had transpired between them at the park and explained that was the reason she sent the angry text messages to him that night. Subject Loza told her he was confused by those texts and wondered why she was upset that night. Complainant [redacted], as instructed by ICIB, apologized for the angry text messages. She proceeded to tell Subject Loza how what occurred reminded her about a bad experience she had in the past with an ex-boyfriend. She explained how she thought Subject Loza should have known something was wrong when she was pushing him (Subject Loza) off of her. Subject Loza apologized and said after hearing about her prior bad experience he understood why she was upset.

Complainant [redacted] asked Subject Loza if he noticed her pushing him off, or squirming in her seat and pushing his hand away on the night at the park. He said he noticed it at the end which is why he stopped. He assured her it would not happen again. She brought up the fact of him biting her and he blamed it on the heat of the moment. He explained to her he had noticed she was holding back a little and that was when he realized she no longer wanted to engage in what they were doing which is why he stopped.

Subject Loza told Complainant [redacted] if she would have told him she did not want to continue he would have stopped what he was doing. He also said if she would have told him about her past bad experience he would have stopped. He reminded her how she never told him to stop and if she had he would have stopped immediately. Complainant [redacted] told him she thought he would have got the hint when she was wiggling and pushing back. Subject Loza said he did notice her hands after a few times and that was when he stopped.

NON- EMPLOYEE WITNESSES

[redacted]

Witness [redacted] was interviewed on January 15, 2013, by ICIB Investigators Sergeants Castano and Matthews. The interview was audio recorded and summarized by ICIB Investigators (**Exhibit A,** Pages 28-30) the following is a synopsis of that interview.

Witness [redacted] said she was pulled over by Subject Loza in April 2012, for texting while driving. She was eighteen at the time. Witness [redacted] denied doing so and explained the last call she made was to her mother who was trying to schedule a photo shoot for the [redacted]

[redacted] Subject Loza issued a citation to Witness [redacted] anyways and explained her driving was distracted. Witness [redacted] had been changing radio stations just prior to being stopped and thought it was best not to argue and therefor signed the ticket. Subject Loza explained to her she could appeal the ticket at court and she should go to the trial. On the court date he would not appear and she would win the case by default. He gave her either a business card or a piece of paper with his phone number written on it. Months later Witness [redacted] and missed her court date. She called Subject Loza asking him what to do. He told her she should be able to get another court date and gave her instructions to help her do so. He instructed her to provide him with the date of her next court appearance and reiterated he would not appear at that second court appearance date.

Witness [redacted] explained during their texting conversations Subject Loza knew she was [redacted] and he asked her if she [redacted]. She told him she had not and he asked her to let him know if she was ever in another [redacted]. He also asked if he could attend any future [redacted]. He advised her to let him know if she needed any [redacted] because he would love to help her. Witness [redacted] remembered at some point he had asked her to send him a photograph of her [redacted] but she could not remember if was to be sent via text or to give him an actual photograph. She did say Subject Loza was specific in the manner in which she supplied the photograph and only wanted it received in that manner. She thought it was odd and chose not to send him a photograph of her.

Witness [redacted] said she eventually had the court appearance date re-scheduled and paid the fine. She added she never felt Subject Loza's instruction to contest the citation was offered as a means to compel sexual favors.

[redacted]

Witness [redacted] was interviewed on August 19, 2013, by ICIB Investigator Sergeant Castano. The interview was not recorded but was summarized by ICIB Investigator Castano (**Exhibit A,** pages 33-34). The following is a summary of that interview.

Witness [redacted] confirmed she had met Subject Loza when he conducted a traffic stop of her for texting while driving. She denied doing so and Subject Loza gave her a warning instead of issuing her a citation for the violation. When Subject Loza found out she worked in the health supplement business she gave him a catalogue of her products and he ended up purchasing a product from her. After that she never heard from him again.

[redacted]

During an audit of Subject Loza's past traffic stops involving female motorists, ICIB Investigator's discovered Subject Loza had used his Mobile Digital Computer (MDC) to run Witness [redacted] seven times (dating from October 10, 2008 to October 18, 2012). Additionally, Witness [redacted] was listed in Subject Loza's cellular telephone contacts as number 254 (Complainant [redacted] was number 253). Upon further investigation ICIB Investigators were unable to find any law enforcement activity connecting Witness [redacted] to the seven searches.

On August 22, 2013, ICIB Investigator Sergeant Castano located Witness [redacted] and interviewed her via telephone. The interview was audio recorded and summarized by ICIB Investigator Castano (**Exhibit A,** pages 35-36). The following is a summary of that interview.

Witness [redacted] said she met Subject Loza approximately five years prior when Subject Loza pulled her over for speeding. She explained how Subject Loza acted professionally during the traffic stop and decided to warn her for the violation instead of issuing her a citation. After he gave her the warning their conversation turned personal and they exchanged phone numbers. She said she was twenty-one years old at the time and the reason she gave her phone number to Subject Loza was because there was a mutual attraction between them. She added there was not any type of coercion involved and she gave her number willingly.

The traffic stop was followed by a three to four year period of time where they exchanged occasional phone calls, text messages, and Facebook postings. Witness [redacted] and Subject Loza went on three to four dates during that time but she did not consider him a steady boyfriend. The dating stopped when he admitted he was married with children. Witness [redacted] refused to date him following his marital disclosure but maintained sporadic contact with him until she changed her phone number several years later. She did not provide him with her new number and had no contact with him for over a year prior to her interview. She added she was never involved in any further law enforcement activity with him after the initial traffic stop.

Witness [redacted] said the only sexual contact she had with Subject Loza was kissing. She reiterated how they only went on three to four dates and she ended the dating once she found out he was married. She described the dates they went on as being dinner and a movie. Additionally, they had met at a couple of public parks but at one park there was no intimacy involved. At the second park she described how they walked around the park and kissed at some point.

Witness [redacted] described how Subject Loza had expressed an interest in taking their intimacy to another level but she told him she would not and he respected her wishes. She added he never forced her to do anything she had not wanted to do.

SUBJECT

Subject Deputy Humberto Loza

Subject Loza was interviewed on December 12, 2012, by Internal Criminal Investigations Bureau Sergeants Eric Castano [redacted] and Kelly Matthews [redacted] The interview was audio recorded and summarized by ICIB Sergeant Castano (**Exhibit A,** pages 15-26). The interview took place immediately after Subject Loza had met Complainant [redacted] at the "Los Arcos" restaurant. The interview was conducted in an otherwise empty room at the El Pollo Loco restaurant across the parking lot from Los Arcos.

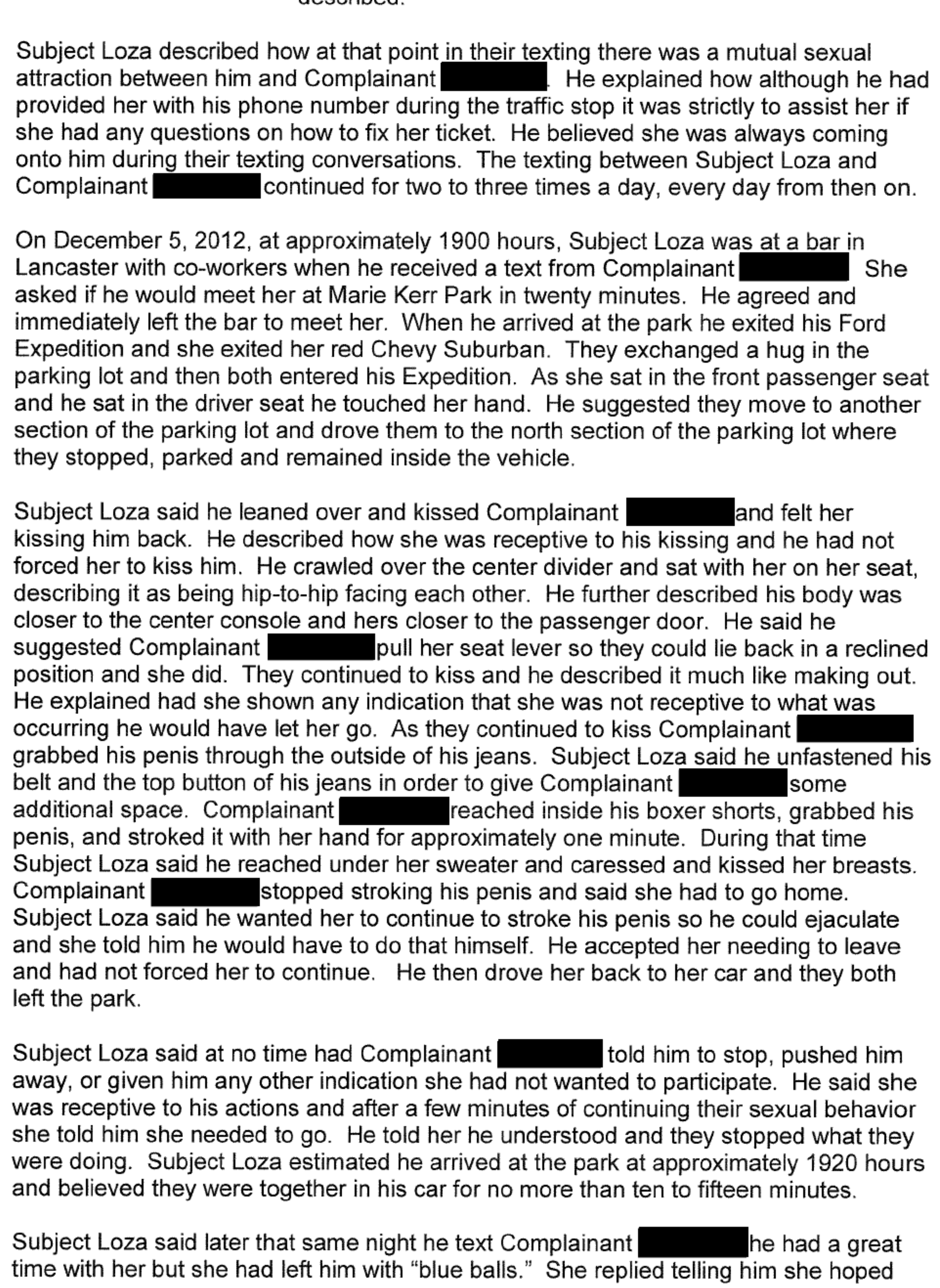
Subject Loza was interviewed by Internal Affairs Bureau Sergeants Catrina Khasaempanth and Patrick Mannion on November 19, 2014, at the Internal Affairs Bureau offices. Subject Loza was represented by attorney Amanda Waters of Green and Shinee Law Firm. The interview was recorded and the following is a summary of both ICIB and IAB interviews.

Deputy Loza told ICIB Investigators he had met Complainant [redacted] when he was on-duty working a patrol car in Palmdale. He saw Complainant [redacted] using a cellular telephone while driving. He initiated a traffic stop and cited her for the violation, 23123 VC. After he wrote her the citation, she began to cry, appeared very upset, and told him she had recently received another citation. Subject Loza told her he had already written the ticket but explained if she were to contest the citation in court he would not show up to court and the ticket would be dismissed. Complainant [redacted] asked what she needed to do in order to have the ticket dismissed and Subject Loza gave her his phone number. He instructed her to call him or send a text message.

Approximately one week later, Subject Loza said Complainant [redacted] sent him a text message asking how he was doing and what she needed to do to have the ticket dismissed. He explained the process again to her and they continued to converse via text message for the rest of that day. Complainant Loza said he kept the conversation at a professional level and never insinuated he wanted a personal relationship with her. During their texting conversation he told Complainant [redacted] it was extremely cold where he was. Complainant [redacted] responded by offering to keep him warm if he met with her. He said after that response he believed she was coming on to him and he asked her what she would do to keep him warm. He described the conversation as heating up but believed he was still keeping the conversation at a professional level as the conversation had not risen to the level of sexting. He explained how she asked to meet him that day but he was busy and had some reservations. He said their texts between each other indicated they both wanted to get together but he declined to meet her.

The next morning Subject Loza received another text message from Complainant [redacted] He believed she still wanted to meet with him but when her texting slowed down he thought she might be reconsidering. He sent her a message asking if she was no longer interested and offered to leave her alone. She replied by telling him she was busy but continued to text him. At his request she sent him four pictures of herself one of which displayed a tattoo on her right hip (**Exhibit C**). He described the other pictures as being a picture of Complainant [redacted] wearing shorts and being naked from the waste up, but had her upper body turned to hide her breasts. Another picture showed her from the torso down exposing her underwear. Subject Loza asked Complainant [redacted] to send a naked picture of her but she declined. Subject Loza said he never forced her to send the pictures and never threatened her if she did not send him a picture.

IAB Note: During the criminal investigation, ICIB located a picture that had been exchanged via text message between Complainant [redacted] and Subject Loza. The picture (**Exhibit C**) depicted Complainant [redacted] wearing undergarments and showed a tattoo on her right hip. ICIB



had not located any other pictures that Subject Loza described.

Subject Loza described how at that point in their texting there was a mutual sexual attraction between him and Complainant [redacted]. He explained how although he had provided her with his phone number during the traffic stop it was strictly to assist her if she had any questions on how to fix her ticket. He believed she was always coming onto him during their texting conversations. The texting between Subject Loza and Complainant [redacted] continued for two to three times a day, every day from then on.

On December 5, 2012, at approximately 1900 hours, Subject Loza was at a bar in Lancaster with co-workers when he received a text from Complainant [redacted] She asked if he would meet her at Marie Kerr Park in twenty minutes. He agreed and immediately left the bar to meet her. When he arrived at the park he exited his Ford Expedition and she exited her red Chevy Suburban. They exchanged a hug in the parking lot and then both entered his Expedition. As she sat in the front passenger seat and he sat in the driver seat he touched her hand. He suggested they move to another section of the parking lot and drove them to the north section of the parking lot where they stopped, parked and remained inside the vehicle.

Subject Loza said he leaned over and kissed Complainant [redacted] and felt her kissing him back. He described how she was receptive to his kissing and he had not forced her to kiss him. He crawled over the center divider and sat with her on her seat, describing it as being hip-to-hip facing each other. He further described his body was closer to the center console and hers closer to the passenger door. He said he suggested Complainant [redacted] pull her seat lever so they could lie back in a reclined position and she did. They continued to kiss and he described it much like making out. He explained had she shown any indication that she was not receptive to what was occurring he would have let her go. As they continued to kiss Complainant [redacted] grabbed his penis through the outside of his jeans. Subject Loza said he unfastened his belt and the top button of his jeans in order to give Complainant [redacted] some additional space. Complainant [redacted] reached inside his boxer shorts, grabbed his penis, and stroked it with her hand for approximately one minute. During that time Subject Loza said he reached under her sweater and caressed and kissed her breasts. Complainant [redacted] stopped stroking his penis and said she had to go home. Subject Loza said he wanted her to continue to stroke his penis so he could ejaculate and she told him he would have to do that himself. He accepted her needing to leave and had not forced her to continue. He then drove her back to her car and they both left the park.

Subject Loza said at no time had Complainant [redacted] told him to stop, pushed him away, or given him any other indication she had not wanted to participate. He said she was receptive to his actions and after a few minutes of continuing their sexual behavior she told him she needed to go. He told her he understood and they stopped what they were doing. Subject Loza estimated he arrived at the park at approximately 1920 hours and believed they were together in his car for no more than ten to fifteen minutes.

Subject Loza said later that same night he text Complainant [redacted] he had a great time with her but she had left him with "blue balls." She replied telling him she hoped

his balls hurt for the rest of his life. He thought she was joking and asked if she was. She said she was not.

The following morning Subject Loza saw he had two messages from Complainant [redacted] The first message asked, "What would your wife think about what you did to me tonight?" and the second message said, "Sleeping? How can you go to sleep with a guilty conscience?" (**Exhibit B,** disc 2). Subject Loza text her asking why she had sent those messages and she apologized for them, explaining she was tired when she sent them.

IAB Note: At the point when Complainant [redacted] had sent the text message apologizing for the prior text about Subject Loza's wife and sleeping with a guilty conscience, ICIB had essentially taken over her message content. ICIB had instructed her to send the apologetic text messages in an attempt to lower the tension level and prepare for further communication between the two. Subject Loza was unaware of that fact at the time he interviewed with ICIB.

Subject Loza said later during that day they continued to text each other and everything appeared to be normal. He reiterated to ICIB investigators that although they never really had sex in the park what they did do was done willingly. He added, Complainant [redacted] was receptive to what was occurring and he never forced her to do anything she did not want. He reminded them how days prior to meeting Complainant [redacted] at the park he offered to leave her alone but she never told him she wanted that.

When Subject Loza was asked clarifying questions by ICIB Investigators he explained the reason he moved his vehicle from the well- lit area of the park's parking lot to the north side near the baseball diamond was in order to have more privacy. Additionally, he was parked in the center of the parking lot and wanted to move to the side of the parking lot.

Subject Loza denied Complainant [redacted] had ever tried to push him away during their encounter inside his vehicle. He further denied he was ever on top of Complainant [redacted] and again described himself as lying next to her in the same seat. Subject Loza said Complainant [redacted] never told him to stop, get off of her, or anything else to indicate his actions were unwanted. Additionally, his body weight was never on top of her. She was in a position that allowed her to reach for the door handle and get out of the vehicle at any time if she so chose.

Subject Loza said there was a time when Complainant [redacted] had placed both of her hands on his chest but it was as though she was hugging him and not pushing him.

Subject Loza admitted he may have led Complainant [redacted] hand down to his penis but it was after she had already grabbed his penis on the outside of his pants. He described the manner in which he led her hand as being he was holding her right hand with his left palm over the backside of her right hand and he placed her hand on his penis. Once she began to stroke his penis he removed his hand from hers.

Subject Loza also admitted to licking Complainant [redacted] chest and stomach during their encounter at the park. He also reached behind her and touched her buttocks. He clarified it was only the upper buttocks area because her pants were still on. He remembered he had also touched her vaginal area over her pants with no skin-to-skin contact. He also tried to reach under her pants to touch her vaginal area but she stopped him from doing so. He explained how she grabbed his hand and pulled it away as he tried to unbutton her pants. He attempted the same thing a second time but she pulled his hand away again and commented to the fact they were not going to do that in the middle of the park. He agreed they would not, but denied ever suggesting to go somewhere else. Although he stopped trying to unbutton her pants he had continued to kiss her and touch her vaginal area on the outside of her pants. At one point he placed his mouth over her vaginal area on the outside of her pants. Subject Loza said Complainant [redacted] never told him to stop during that time so he believed what he was doing was acceptable.

Subject Loza said he had kissed Complainant [redacted] breasts hard and may have put his teeth on her nipples but denied biting them. When ICIB Investigators told him they had seen significant bite marks on Complainant [redacted] breasts which she said were a result of Subject Loza biting her, Subject Loza said that was a true statement because he had been kissing Complainant [redacted] breasts. However, he had not seen any marks the night of the incident at the park and noted the interior of his vehicle was dark that night.

Subject Loza said his actions with Complainant [redacted] were not illegal, but had made him uncomfortable. He explained the only improper thing he had done was he initially met her when he was on-duty. He said everything that happened between them afterwards was when he was off-duty and between two consenting adults. He believed Complainant [redacted] was attracted to him and liked him.

In regards to the original traffic stop of Complainant [redacted] Subject Loza explained the reason he offered to not appear in court as opposed to disposing of the ticket properly by voiding it, was because Watch Commanders do not typically void citations that are properly issued. He explained how he was not someone who would take a citation back to the station to have it voided because someone was having financial difficulties. He added, once he wrote a ticket he then submitted the ticket for processing. Subject Loza concluded the best thing he could do for Complainant [redacted] in that instance was to explain the process for contesting the ticket. When the time came for him to receive the court subpoena he would not show up for his court appearance.

Subject Loza explained the reason he would ignore a court subpoena was because he was not a traffic deputy and therefore did not need to appear in traffic court. He added he was not mandated to appear in court for traffic tickets and there have been multiple previous appearances he had not appeared for. He further stated only deputies assigned to work a traffic enforcement car were mandated to appear in traffic court. Since he was working a criminal enforcement car he was not mandated to appear in traffic court. Subject Loza had agreed with ICIB investigators it was not proper, by either Department Policy or by law, to have made an agreement not to appear in court for Complainant [redacted] ticket.

Subject Loza said although he worked a criminal enforcement car he also stopped a lot of vehicles and issued citations. He explained the majority of his citations were for cellular telephone violations. He added more females than males tended to use their cellular telephones while driving and therefore there would be a higher percentage of females whom he stopped than males. He was unsure if his traffic stop of Complainant [redacted] was logged or not. He defended his reasons for not logging all of his traffic stops was because there were many times he was too busy to make the computer entry.

During Subject Loza's meeting with Complainant [redacted] at the Los Arcos Restaurant the entire meeting was surreptitiously recorded. Subject Loza clarified what he meant when he told Complainant [redacted] he "got in too deep," during that conversation. Subject Loza explained while at the restaurant [redacted] He believed her comfort level with him that night at the park may have been affected by her prior experience and since their sexual contact took place the first time he and Complainant [redacted] met socially, what occurred that night might have been too soon for her. Subject Loza denied being focused on his sexual needs that night at the park and added he had not missed any signals by Complainant [redacted] to stop.

Subject Loza disclosed to ICIB Investigators he had developed personal relationships with four other female motorists he had met during traffic stops. He described one as being [redacted] whom he stopped for a cell phone violation but had not issued a citation to. He said she was a [redacted] and the traffic stop occurred in 2011 at 10th Street West and Technology Drive. When she told him she [redacted] he became a customer and only bought from her once. He said she was approximately forty years old and he denied having a sexual relationship with her.

Subject Loza also described a traffic stop of a female whom he described as being white, approximately eighteen years old, named [redacted] and was [redacted] After he issued her a citation she told him she was participating in [redacted] He offered her, the same option he offered to Complainant [redacted] wherein he would not appear in court for her ticket. He said the reason he offered her the same way out of paying the ticket fines was because she was [redacted] and was a good girl. Subject Loza said he was working a criminal enforcement car at the time and had been completely professional with her. He said he never had a sexual relationship with her. He gave her his phone number when he gave her his Department business card which had his personal cellular telephone number imprinted on it. He added it was Department policy to provide those cards upon request. He was reminded by ICIB Investigators that policy actually referenced business phone numbers and not personal phone numbers.

Subject Loza described another traffic stop where he stopped a female, named [redacted] for speeding. She had told him her husband was applying for a position of deputy sheriff and was interested in doing some ride-alongs. Subject Loza gave her his number and offered to assist her husband. At a later date, he met [redacted] for coffee but her husband was not present. Subject Loza said nothing inappropriate happened and

he kept his relationship with her at a professional level. He added they never had a sexual relationship nor had he ever expected anything to happen.

Lastly, Subject Loza described a female Hispanic, in her twenties whom he had stopped for a loud muffler, expired registration, and no insurance. The women insisted she had insurance and started crying. Subject Loza gave her his phone number and told her to text him a photograph of the proof of insurance and he would see about dismissing the citation. Later in that same day, he received a text message with a photograph attachment from someone he assumed was the same women. Subject Loza said although he had not asked anyone else to text him photographs of information, he was unsure of whom he was communicating with and asked her to send a photograph of herself to confirm her identity. The next thing he heard was the same female went to Palmdale Station to complain about Subject Loza coming onto her. Subject Loza said he was subsequently written up for improperly trying to dismiss a ticket. The traffic stop occurred in 2011 on Sierra Highway and Avenue Q.

IAB Note: This incident was documented by Palmdale Station under Watch Commander's Service Comment Report [redacted] with SC (PDE) [redacted] See **Miscellaneous Documents** for further.

Subject Loza admitted it may not have been a good idea to give his phone number to female motorist he issued citations too and make arrangements with them to not show up for court appearances. Although it may not have been a good idea he had no intentions of starting relationships with them.

Subject Loza voluntarily provided his cellular telephone [redacted] to ICIB Investigators at their request and for their review. He advised them the messages between him and Complainant [redacted] concerning the meeting at Marie Kerr Park had already been deleted from his phone.

During Subject Loza's interview with IAB investigators he was asked to further explain his reasoning for telling Complainant [redacted] to contest the citation and his plan to not appear in court. He explained once Complainant [redacted] broke down crying and she told him the hardship the ticket would cause he felt bad, which compelled him to explain the process of contesting the citation. He gave her his personal cell phone number because she asked for it and remembered it was because she had not decided if she would follow through with contesting the citation. She asked for his number so she could let him know of her decision. He was reminded how he previously admitted it was common practice for him to not appear for traffic court appearances so therefore why did he need to know if she contested the ticket or not.

Subject Loza explained it was common for him to give his phone number to numerous people during the course of his duties and therefore it felt natural to give his phone number to Complainant [redacted] when she asked. He had given his personal phone number to citizen contacts in the past for investigative purposes as well as cultivating informants. He could not remember if he had ever given his business card to any male motorists or female motorist older than their twenties, whom he stopped for traffic

violations and later met with. He described how his business card was imprinted with his personal cell phone number.

IAB Note: At the time of Subject Loza's interview he did not have any business cards in his possession for review by IAB.

Subject Loza said when he gave his phone number to Complainant [redacted] it was not with the intent to start a personal relationship with her it was strictly business related and he wanted to help her.

Subject Loza said approximately two weeks later Complainant [redacted] text him she was thinking about following through with contesting the citation. He explained the process to her again and they continued to text for the rest of the day. Subject Loza said the reason he continued to text her that day was because he did not want to appear rude by not responding to her texts. He added she had been texting him and he was just replying with short answers to her text. He admitted at some point he began to ask her questions and said it was because she had been asking him personal questions.

Subject Loza explained how during that texting conversation when Complainant [redacted] offered to keep him warm he was flattered because he believed she was flirting with him. He explained how although he was flattered by her flirtatious text he did not want it to continue. He had no desire to explore a relationship with her but was curious as to what she would do to keep him warm. He believed she wanted to hug or kiss him in order to keep him warm therefor he asked her what she would do.

Subject Loza reiterated how throughout his texting conversations with Complainant [redacted] he always kept it professional. He admitted he may have been flirtatious at some point but never said anything inappropriate. He described inappropriate as making lewd or unwelcomed comments.

Subject Loza provided further detail as to his reasons for meeting with Complainant [redacted] at Marie Kerr Park. He said when he received the text to meet at the park he was curious to see what would happen. He believed she may have wanted to show him how she would keep him warm, by hugging and kissing him, so he agreed to the meeting.

Subject Loza said the reason he followed through and went to the park was because he wanted to put an end to the flirtation occurring between them. He believed if they met face to face she would see he was an older man and not want to continue her communications with him.

Subject Loza provided further detail as to whether his reason for meeting at the park was to see how far sexually (hugging and kissing) Complainant [redacted] would take their relationship or if it was to end her flirtatious behavior with him. He explained how he was having an internal struggle with himself. He said he knew by the way her past text messages sounded, that she wanted to get physical with him. But he also had some reservations about getting physical with her. He said he wanted to end what was occurring but at the same time he was flattered by her. He admitted he could have sent

a text message to her ending their communications but said he wanted to tell her in person.

Once he arrived at the park and after they greeted each other they entered his vehicle. He provided further reasoning as to why he moved from one part of the park to another. He explained how when he touched Complainant [redacted] hand she was receptive to his touch and he felt they were moving onto something else. He then moved his car but said it was because of the angle he was parked at took up to many parking stalls and it was a natural reaction to move to the other end of the park because that was where he parked when he would go running there.

Subject Loza said he felt nothing that transpired between Complainant [redacted] was improper. He explained how the text messages between them made him feel uncomfortable but he never did anything improper. He explained how although he felt uncomfortable about his interactions with Complainant [redacted] the reason why he continued with their relationship was because he felt flattered by her. He added what occurred between them happened so fast and evolved into what transpired at the park.

During Subject Loza's interview with IAB he discussed additional female motorist he had conducted traffic stops of and later met. Those women were the same as he had mentioned during his ICIB interview. In addition to those aforementioned women he also spoke about a woman named [redacted] He explained he met her on a traffic stop in 2007 or 2008. He had stopped Witness [redacted] for speeding and at the time she was twenty years old. He said he did not issue her a citation but gave her his cell phone number. He explained the reason he gave her his cell phone number was because she was running late and was past her curfew. He told her if her parents had any problems with her getting home late she should tell them it was because she was pulled over. Several weeks later Witness [redacted] texted him and they met to have coffee followed by three to four additional meetings with each other. He said their friendship never evolved into any type of relationship, sexual or otherwise.

Subject Loza was reminded of the Performance Log Entry (**Miscellaneous Documents**) he received on May 7, 2011, and spoke about during his ICIB interview. It was regarding a traffic stop he conducted on April 27, 2011, where he issued a citation to the female driver for a brake light equipment violation. Additionally, she did not have proof of insurance or vehicle registration with her at the time. In that instance the female (Hispanic, 20 years old) motorist cried and Subject Loza gave her his phone number instructing her to send him a photograph of her proof of insurance and registration and he would then dismiss the ticket. When she later went home and sent him a picture of her proof, via text message, he asked her to send a picture of herself. She later complained to the Palmdale Watch Commander and alleged Subject Loza was coming onto her. Subject Loza received a PLE (Performance Log Entry) for the incident and it was documented that Subject Loza acted improperly and unprofessional and placed the department and himself in a precarious awkward situation. He was also warned his actions could be construed as flirtatious in nature and if continued, could lead to more problematic situations. In that same PLE he was also warned about his failure to log the traffic stop and log the citation on his Deputy Daily Worksheet.

Although Subject Loza had been warned about giving his personal phone number to female motorist in order to do away with the motorist paying any fines and he did essentially the same thing with Complainant [redacted] he denied having any type of a pattern. He reasoned it just so happened that in each incident the female motorists cried and he only showed a pattern of helping them. He denied he was using his position as a deputy sheriff to meet women and begin personal relationships with them.

Upon review of Subject Loza's Deputy Daily Worksheet (**Exhibit D**) for October 29, 2012, there was no record of any log entries made of the traffic stop he conducted of Complainant [redacted] Subject Loza explained he was busy working as a field training officer that day and was shadowing the trainee (Deputy Oleg Polissky[redacted] Unit 261) who was in a separate vehicle. In reviewing Subject Loza's Deputy Daily Worksheet (DDWS) and Unit Details printout (**Exhibit D,**) it indicated he only had four log entries and was not particularly busy. Subject Loza explained he was assisting his trainee, unit 261, on his calls and had not logged the activity on his DDWS. He provided no explanation as to why he had not made a late observation entry on his DDWS for the traffic stop of Complainant [redacted] He added it was not his intention to purposely not log his contact with Complainant [redacted] it just happened.

In regards to Subject Loza's explanation as to why he did not appear for traffic court, he provided the following details to IAB investigators. Subject Loza said he had never received a subpoena to appear. He described how Palmdale Station would post a sheet of paper on the briefing board near the briefing room each morning and it was each deputy's responsibility to look at the paper to see if they had a subpoena for a traffic court appearance. The paper would list the defendant's name, the deputy's name, case number, and court appearance date. He said there was never any actual subpoena given to the deputies and no one told them if their name was on the paper. Also, he believed there was never a unit order explaining the process and thought it was just common procedure that everyone was aware of. Subject Loza did admit to seeing his name posted on the traffic court subpoena appearance paper, but chose not to appear in court on those days. He further explained during his time working at Palmdale Station, since 2005, he has never appeared in traffic court.



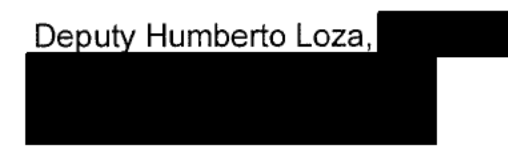
Jim McDonnell, Sheriff

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



January 16, 2015

Deputy Humberto Loza, [redacted]



Dear Deputy Loza:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business February 9, 2015.

An investigation under IAB File Number 2326158, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct, on or about December 5, 2012, while off duty, you knowingly met with a citizen you had issued a citation to and engaged in undesirable and/or unprofessional conduct, and/or sexual activity, while the court case for the traffic citation was still pending, thereby bringing discredit upon yourself and/or the Department, and/or such conduct conflicted with the Department's Core Values, Mission, and/or Creed, and as such embarrassed yourself, and/or the Department, as evidenced by, but not limited to:

   a. issuing a traffic citation to complainant [redacted] on October 29, 2012; and/or,

   b. exchanging text messages for personal purposes with the complainant between November of 2012, and December 5, 2012; and/or,

c. requesting complainant to send you a naked picture; and/or,

d. meeting with the complainant and engaging in sexual activity in a vehicle parked in a public park while members of the public were present.

2. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, between April 2012 and December 2012, on two separate occasions, after issuing traffic citations, you showed an unwillingness or inability to perform assigned tasks when you agreed to not show up to the driver's court hearing, as evidenced by, but not limited to:

a. issuing a traffic citation to complainant on October 29, 2012, and promising complainant that you would not appear at the court hearing so that the citation would be dismissed; and/or,

b. issuing a traffic citation to [redacted] (referred to as [redacted] and promising that you would not appear at the court hearing so that the citation would be dismissed.

3. That in violation of Manual of Policy and Procedures Section 3-01/100.45, Use of Communications Equipment, between 2008 and 2012, you used Sheriff's Department communications systems for personal, social, or unofficial purposes, when you obtained confidential driver's license and vehicle registration information on several females for no legitimate law enforcement purpose, as evidenced by, but not limited to:

a. performing a computer search of [redacted] on January 15, 2011, August 7, 2012, and October 21, 2012, for no legitimate law enforcement purpose, and transferring the information obtained to a personal cell phone device; and/or,

b. performing a computer search of [redacted] on December 16, 2008, June 14, 2010, and April 10, 2011, for no legitimate law enforcement purpose; and/or,

c. performing a computer search of [redacted] seven times from October 10, 2008, until October 18, 2012, for no legitimate law enforcement purpose.

4. That in violation of Manual of Policy and Procedures Section 3-01/030.07, Immoral Conduct, on or about December 5, 2012, you engaged in lewd conduct while parked in a vehicle in a public park while members of the public were present.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Jacques La Berge, on February 9, 2015, at 1400 hours, in his office, which is located at 4700 Ramona Boulevard, Monterey Park, California 91754. If you are unable to appear at the scheduled time and wish to schedule some other time prior to February 9, 2015, for your oral response, please call Chief La Berge's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief La Berge's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief La Berge's office by no later than February 9, 2015.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Donnie L. Mauldin, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

DLM:CMJ:cj

c: Advocacy Unit
Employee Relations Unit
Chief Jacques La Berge, North Patrol Division
Internal Affairs Bureau
(File #2326158)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

January 4, 2017

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of **HUMBERTO LOZA** for a hearing on his **discharge**, effective February 11, 2015, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 15-60.**

The Civil Service Commission, at its meeting held on December 21, 2016 approved findings in the above-entitled case. The petitioner's objections were overruled. Commissioner Donner was absent.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: Humberto Loza
Amy Johnson
Vincent McGowan
Stephen Biersmith

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective February 11, 2015, from the position of Deputy Sheriff, Sheriff's Department, of* **HUMBERTO LOZA (Case No. 15-60)**	ORDER OF THE CIVIL SERVICE COMMISSION

On December 21, 2016, the Civil Service Commission of the County of Los Angeles overruled the Petitioner's objections. The Commission adopted as its final decision, the findings and recommendation of the Hearing Officer, Stephen Biersmith, to sustain the Department. Commissioner Donner was absent.

Dated this 4th day of January, 2017.

Z. GREG KAHWAJIAN, President

Dennis F Hernandez / LCSC
DENNIS F. HERNANDEZ, Member

NAOMI NIGHTINGALE, Member

STEVEN AFRIAT, Member

Absent
JOHN DONNER, Member

COUNTY OF LOS ANGELES
CIVIL SERVICE COMMISSION

In the Matter of the Appeal of

HUMBERTO LOZA,

Appellant

vs.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW &
RECOMMENDATION

Case No. 15-60

APPEARANCES

For the Appellant:

Ms. Amanda Waters
Green & Shinee
16055 Ventura Blvd. #1000
Encino, CA. 91436-2680

For the Department:

Mr. Vincent McGowan
Law Offices of Hausman &Sosa
18757 Burbank Blvd. #305
Tarzana, CA. 91356-6329

HEARING DATES

October 20th and 22nd of 2015 and March 17th and 24th of 2016

ISSUES

1. Are the allegations contained in the Department's Letter of February 12, 2015 true?
2. If any or all are true, is the discipline appropriate?
3. Did the Department violate the Petitioners pre-deprivation due process (Skelly) rights as alleged?
4. If so, what is the appropriate remedy?

5. Was there a violation of the Public Safety Officers Procedural Bill of Rights Act, Government Code Section 3304(d)?
6. If so, what is the appropriate remedy?

WITNESSES

For the Department:

1) [redacted]
2) Eric Castillo
3) Jacques LaBerge
4) Lt. Paul Clay

For the Appellant:

1. Deputy Frank Arcidiacono
2. Sgt. David Sauer
3. Sgt. Clinton Skaggs
4. Christopher Matthews
5. The Appellant

EXHIBITS

For the Department:

1. Intent Letter dated 1/16/15
2. Discharge Letter\Disposition Sheet, dated 2/12/15
3. Disposition Sheet, dated 1/9/15
4. IAB Investigation Summary
5. Applicant's ICIB Interview, dated 12/12/12
6. Appellant's IAB Interview, dated, 11/19/14
7. Supplemental Report by Sergeant Eric Castro
8. Google Map Marie Kerr Park
9. Copy of Citation Issued to Complainant [redacted]

10. Crime Lab Photo Card Depicting [redacted] Injuries
11. Forensic Medical Report Relating to [redacted] dated 12/6/12
12. Entry and Search Wavier Signed by Appellant, dated 12/12/12
13. Search Warrant and Affidavit dated 12/21/12
14. Search Warrant and Affidavit dated 1/9/13
15. Return to Search Warrant Re: Appellant's Car
16. Warrant Amendment
17. Return to Search Warrant
18. Photograph of Complainant [redacted] sent to Appellant
19. Deputy Daily Worksheet and Unit Details for Appellant dated 10/29/12
20. Appellant's Training Record
21. Core Knowledge Assessment Program Taken by Appellant
22. Guidelines for Discipline Receipt – Signed by Appellant
23. Procedures for Department Services Reviews – Signed by Appellant
24. Use of Criminal Record Information – Signed by Appellant
25. Consolidated Criminal History Reporting System ("CCHRS) and DMV Record Information Policy- Signed by Appellant
26. User Acknowledgement of Electronic Communications Policy – Signed by Appellant
27. Email and Electronic Workplace Related Issues – Signed by Appellant
28. Certificate of Field Training Program
29. Unit Order 09-33 – Court Liaison Plan
30. Field Operations Directive 10-02 Subpoena System
31. Field Operations Directive 00-04 – Deputy's Daily Worksheet and Logging Public Contacts
32. Field Operations Directive 00-06 – Court Appearance Policy
33. User Acknowledgement of Electronic Communications Policy
34. Citation Void/Dismissal Procedures
35. Field Operations Directive 00-08 – Use of Informants
36. Unit Performance Log- Signed by Appellant
37. Watch Commander's Service Comment Report Re; Appellant's Inappropriate Behavior with Complainant [redacted]

38. Lt Clays' Report to Captain Denham Re Appellant's Inappropriate Conduct towards Complainant [redacted]
39. PM Shift In-Service
40. Audio CD – Appellant's IAB
41. Audio CD – Appellant's IAB
42. Audio CD – [redacted] CIB
43. Audio CD – [redacted] at Palmdale Station
44. Sheriff's Department Core Values
45. Class Specification – Deputy Sheriff's
46. Sheriff's Department Discipline Guidelines
47. CSC Notice Re Certified Issues
48. 4-Day Suspension Letter
49. CD – Photos of [redacted]
50. Photos of [redacted]
51. Audio of Conversation between Appellant and [redacted] (Pt. 1)
52. Audio of Conversation between Appellant and [redacted] (Pt. 2)
53. Transcript of [redacted] IAB Interview by Sgt. Castano
54. Transcript of [redacted] IAB Interview by Lt. Kneer
55. Sheriff's Department of Discipline Guidelines
56. St. Castano's Notes on Canvass Results
57. April 2011 Traffic Citations by Det. Loza
58. DVD Text Messages between Appellant and [redacted]
59. List of Oct. 2012 Citations Written by Appellant
60. Transcriptions of Restaurant Conversation between Appellant and [redacted]
61. October 2012 Additional Traffic Cites Written by Loza
62. Appellant's MDC Log Showing Computer Checks on [redacted] and [redacted]
63. Appellant's MDC Logs Review Showing Checks on [redacted]
64. (a) DMV Printouts of Females Cites, Contacted or Noted by Deputy Loza
    (b) DMV Printout of [redacted]
65. MDC Search Results

66. Daily Worksheets
67. Deputy Daily Worksheet
68. Deputy Daily Worksheet
69. Deputy Daily Worksheet
70. Notices to Appear
71. Notices to Appear

Appellant's Exhibits:

A. L. A. County District Attorney Charge Evaluation Worksheet and Declination Letter
B. Photos Sent by [redacted]
C. Transcript of Text Messages Sent between Loza and [redacted]
D. Guidelines for Discipline
E. Dept. Loza's Commendations
F. Dept. Loza's Performance Evaluations
G. ICIB Interview Transcript of Hayes
H. Letter to Chief LaBerge, requesting clarification of charges
I. IAB Investigator's Log
J. IAB Investigation Table of Contents
K. ICIB Investigation Table of Contents
L. Indecent Exposure Elements (Withdrawn)
M. Lewd Acts in a Public Place Elements
N. Business Cards
O. Department Policies
P. Administrative Investigations Handbook
Q. Loza's Administrative Rights Form
R. Loza and Castano Emails
S. Castano Emails with Alexander and LaBerge
T. Johnson and Castano Emails
U. LaBerge Emails
V. (Omitted)
W. Castano Notes

TESTIMONY PRESENTED

[redacted]

As the [redacted] would only give out her photograph as part of an acknowledgment for the contribution a business made to her charitable fundraising efforts. In April of 2012 she was pulled over in the City of Palmdale by the Appellant on the way to a photo shoot and while wearing [redacted] He asked for her registration and told her she had been texting while driving. [redacted] told him that had not been the case in that her car had been stationary and she had been turning on her radio. The Appellant said he had already written it up, but that he could help her with the appeal. The Appellant gave [redacted] his phone number and said if she wanted to appeal, he would not show up on the court date and the citation would be dismissed. They had a brief conversation about [redacted] and he told her to give him a "shout out" if she [redacted] He also asked to be invited to the [redacted] did not feel threatened.

Afterwards, [redacted] texted and had several phone conversations with the Appellant. During their first call the Appellant said he would not be there on her court date. In one text he asked if she was still [redacted] and requested a picture of her [redacted] He said it would be better if she could give it to him in person. [redacted] did not do so given their age difference and her belief that she should not be sending photos to anyone involved in the Appellant's profession.

After [redacted] missed the initial court date she was sent a warrant notice indicating an $800 fine. Subsequently she contacted the Appellant who told her that he had not shown up and that he had checked and there was no warrant. He told her to reschedule a court date and for the third time said he would not show up. She thought he was being helpful. Just before going into court a few months later, she called the Appellant, who again told her that he would not be there. She

still ended up having to pay the fine. The Appellant never asked her out, suggested they meet up, or made any sexual comments. He never texted or called her again after she went to court.

Sgt. Eric Castano

In December of 2012 Castano was working in the ICIB when he was notified there was a female at the Palmdale station who had reported a sexual assault by an off-deputy sheriff. Castano and Sgt. Matthews subsequently interviewed a [redacted] the complainant. She told them she had first met the Appellant during a traffic stop in Palmdale in Oct. 2012. She had been stopped by the Highway Patrol earlier and told the Appellant this new citation was going to be a burden. They texted each other several times before she met the Appellant in a local park. He had offered not to show up in court. After she got into his vehicle, he straddled her and they engaged in some kissing. He then lifted up her bra and bit her on the breast. She was trying to push him off, but his weight held her down. After telling the Appellant she needed to get home, they left. [redacted] was taken to the hospital for a sexual assault examination.

At one point [redacted] said she was never sexually attracted to him, but on another occasion said she was. Initially [redacted] stated she had only sent him a picture of her head, but later admitted having sent one with her breast exposed and in her lingerie. He sent her photographs and texts as well unrelated to law enforcement.

About four or five days later the investigators were able to arrange a meeting between her and the Appellant. Afterwards they detained the Appellant and took his cell phone. They told the Appellant he was not under arrest and requested that he voluntarily participated in an interview. The Appellant admitted to giving her a citation, given out his phone number, and agreeing to not appear so that she would not have the court fine. There was no indication of any quid pro quo. As to what had happened in the park, he denied there had been any forced sexual assault in that it

had been completely consensual. He said they had kissed, that [redacted] had stroked him, and that he had bit her on her breasts. The Appellant admitted there may have been other work-related stops of women which led to a personal relationship. The only three women he named as having also been told by him that he was not going to court, were [redacted] The Appellant said he did not feel he had to go to traffic court unless subpoenaed.

Believing there may have been other such incidents and given the Appellant had previously been involved in an investigation for inappropriate behavior at a traffic stop, [redacted] looked into the Appellant's log sheets and computer usage around the same time as the [redacted] incident. In doing so he identified several female drivers who had been the subject of repeated searches including [redacted] and [redacted]. With the exception of the first [redacted] run, the rest did not appear to have any law enforcement purpose. The Appellant did not know how comments about [redacted] ended up on his phone.

Prior to his interview the Appellant was given the standard ICIB advisement. At the conclusion of the criminal investigation the District Attorney declined to prosecute. Castano had not given them his audit findings which showed the Appellant had run searches on woman at a 2 -1 ratio. He agreed with the DA's written decision not to prosecute.

Chief Jacques LaBerge

As the decision maker, LaBerge reviewed both investigations, transcripts of the interviews, recordings of the Appellant, logs, his prior disciplinary history, training records, and policies. He was aware the Appellant had received evaluations in the outstanding to very good category and that previously he had been given a four 4-day suspension for failing to perform to standards for the way he handled evidence.

In listening to the recording of the Appellant, La Berge was taken back about how casual he was in acknowledging his behavior, including telling people how he could help with their citations and about what had taken place in the park. The Appellant did not seem to acknowledge his actions had been inappropriate. He also appeared deceitful when he gave reasons for his behavior. The Appellant had earlier been put on notice about the inappropriateness of such behavior. Although it did not constitute formal discipline, the Appellant was given a counseling statement after the Department received a complaint from a woman, who said she had been pulled over by the Appellant and told to send proof of insurance to his phone.

As to the first charge, LaBerge believes the Appellant's meeting with a woman to have sexual contact while her traffic citation was still pending was an embarrassment and damaged the reputation of the Department. He acknowledged there was no specific policy regarding having a personal relationship if a citation was still active, but that it could be an obstruction of justice. There was no need for the Appellant to have given them his personal cell phone number. LaBerge did not recall reviewing Exhibits 56, 57 or 59, 61, 62 or 63.

As to the second charge, LaBerge noted the Appellant previously violated this same policy section. In 2011 the Appellant was advised how to handle citations and that an officer was required to go to court and explain why he issued the ticket. He agreed there are some reasons which could prevent an officer from going. During his interview the Appellant said he never went to court.

The third charge was supported by the Appellant having used the Department's computer for personal and not any legitimate law enforcement reason. It appeared as if the Appellant had run a higher percentage of females, using his time to target relationships and not log certain contacts. He had done so on 13 occasions, including seven (7) times on one female.

LaBerge decided on discharge given the Appellant's pattern of behavior of targeting young females. He actions were almost predatory in nature in that he would give a citation, which could be upsetting, and then use it as a way to help these young females. He noted that lewd activity and immoral conduct does not necessarily have to be that which violates the law. A deputy sheriff is entrusted with significant authority and is in a position of public trust. Running women through the confidential data base, issuing a citation with possible fines, and then using that process to start conversations and meet them off duty could have exposed the Department to civil liability. LaBerge agreed that a "Performance Log" entry is not discipline, but is considered counseling. The one issued to the Appellant stated any further such conduct can result in further discipline. Given his tenure and training, the Appellant should have known the various policies he is accused of having violated.

Lt. Paul Clay

Clay was a watch commander when [redacted] filed a complaint after being stopped by the Appellant for failing to have insurance/registration and a defective break light. The Appellant told her she needed to send him proof of registration and insurance. He gave her his personal cell phone number and also asked her for photograph. She was uncomfortable with the request and did not believe his actions were professional. Afterwards Clay spoke to the Appellant, who told him that he was just trying to be a nice guy and that giving his phone number out was something he did not do. As to "getting rid of the ticket," Clay told him either a watch commander could void it or he could try and amend the ticket, if there was a legal basis or extenuating circumstance. Clay also let him know the contact had not been appropriate and that such actions could result in liability for the Department. The Appellant showed regret and said he should not have done it. Clay told him that in the future, he was not to give his personal cell phone out to

anyone. Clay documented the incident in the performance log entry and in the watch commander service report.

Clay heard from David Sauer there had been another incident involving the Appellant where a Custody Assistant had complained about him having contacted his daughter and asked questions about his wife. Afterwards Sauer told the Appellant to find a new place to park. Later Clay talked to his supervisors about the Appellant's suitability after he had applied for a job with the community policing team. They did not want him and Clay never told the Appellant why he was not selected.

Deputy Frank Arcidiacono

Arciacono, who had worked with the Appellant on the Zone Team in Palmdale, considered him to have been a really hard worker. While on that assignment the City issued them cell phones in case they needed to communicate with a public watch member. They were encouraged to give out their cell phone numbers. He was never told it was against policy. He agreed one should not give his phone number without a business reason. He does not believe establishing a personal relationship is necessary wrong, but agreed it would be to serially run someone through the computer. He never told anyone he ticketed that he would not show up in court because he wanted to comply with policy. He added there were no requirements requiring a crime car to go to traffic court and that there were times when officers did not have to go

Sgt. David Sauer

For several years Sauer was the Appellant's immediate supervisor. He considered him to have been a consciousness and hard worker. The only complaint he could recall about him came from a Custody Assistant at Mira Loma, who felt the Appellant was frequenting an area to watch his wife jog. The Appellant had approached their daughter and asked her questions about her

mother. Clay told the Appellant to stop such behavior and that it could hurt the Department. The Appellant did not admit or deny that he had done such a thing.

Sauer agreed it was inappropriate to either run women through the computer for personal reasons or to ticket someone and then tell them he would not show up to court. He also agreed the Appellant's conduct may have been lewd, if indeed it did occur, and that it would be counter to what was expected of an officer. If a lieutenant had counseled someone, Sauer would expect the discipline to escalate if the employee did not change their behavior.

As a traffic deputy, Sauer would not respond to any subpoenas because he was not trained on the radar. Generically, the traffic commissioner may call and say some deputies are not showing up for their subpoenas. If that happened, it would be addressed within the group. As to providing personal phone numbers, he believes the policy prohibiting the same only came out a couple of years ago. It was instituted to prevent having an officer's phone records be brought into court. He does not believe there is a policy against establishing personal relationships. Depending on the context, he agreed it would be inappropriate to ask for a photograph.

Sgt. Clinton Skaggs

Skaggs worked with the Appellant for a number of years. The Appellant had a high arrest record and was always very proactive in working service calls to a conclusion. He noted when working a crime car one was expected to make some traffic stops. It was fairly common not to go to court in part because it was hard to change court dates and that could be difficult for those on shift work. Skaggs agreed it would be inappropriate to write a ticket and then tell the person you were not going to show up in court. He also agreed that the Department's computer should not be used for personal reasons.

Christopher Matthews

Matthews, a retired deputy, characterized the Appellant as one of the more proactive officers he had worked with. The Appellant told him he should not have had a relationship with someone he met on the job, but did not say he did anything else wrong. He noted that officers in crime cars, who wrote traffic citations, very rarely showed up to court. He would not ticket someone and then tell him he was not going to show up in court. If he issued a ticket, he would follow through with it. He agreed a MDT should only be used for law enforcement reasons. Until a couple of years ago there was no policy as to using one's personal cell phone.

The Appellant

The Appellant was hired in July of 2000. Later he was assigned to Palmdale's Zone Deputy detail and issued a cell phone. He put his personal cell phone number on his business card to maintain contacts with its citizens. He was never trained not to give out his cell phone number. Since he drove a crime car, he did not go to court unless subpoenaed in that most people would pay the fine and many stops were just mechanical in nature. It was very common and an unwritten rule that deputies did not have to go due to their shift, priority calls, or crew shorthandedness.

He stopped [redacted] after observing her using a cell phone. After seeing the Appellant write up a citation, she started to cry. Feeling bad, he told her that if she wanted to fight it and he did not show up, then she would win by default. He was not sure if he actually told her he was not going to show-up. He was never told there was a policy against him doing so. After she asked him how to contest it, he gave her his business card. She texted him two or three weeks later telling him she was taking his suggestion that she was going to contest the citation. [redacted] texted him several times telling him she wanted to meet up with him. She sent him a

picture of her posing in her lingerie. The Appellant told her he was busy and that he could not meet her so as to give her the hint to stop texting him.

One evening he received a text message from her asking to meet at the park. After he arrived, she got into his truck and he drove to the north end of the park. No one saw them. They started kissing, he rubbed his penis, and he asked before touching her breast. After a couple of minutes [redacted] said she had to go. He did not believe it had been a policy violation to meet up with her in that a lot of deputies develop relationships with those they meet during the course of their employment. He believes that when he met her in the park, her citation was still pending.

The Appellant stopped [redacted] after he saw her texting. She started to cry and told him she was trying to raise money to run for [redacted] Feeling bad for her, he told her, if she fought the ticket and he did not show up, she would win by default. He gave her a business card and told her if she was going to contest it to let him know. About a month later she contacted him and said she was going to fight it. The Appellant told her he was not going to go to court. He admitted asking for her picture and that he would like to go to one of [redacted].

There was another occasion when he cited a woman for having no registration. He told her to send him the remedial information and he would see what he could do. After getting the information and to make sure it was the same person, he asked for her picture. After the woman complained to the Department about the picture request, the Appellant was told not to engage in such female contact and was counseled how to get a ticket dismissed. Since it was not a formal write-up, he decided not to contest it.

As to the incident where he stopped the daughter of another County employee, the Appellant had stopped her mother earlier. About a year later, he pulled the daughter over after she failed to stop at a turn. She started to cry and told him that her parents were going to kill her.

He told her to calm down. About two hours later Sauer called and said an employee had reported that he was harassing his daughter and was having some relationship with his wife. Since Sauer had told him it was not a formal complaint, the Appellant never protested it.

The Appellant explained his computer search on [redacted] by stating he was very proactive, even when off duty. He made notes about her on his cell phone to check on the vehicle for when he got back to work. As to why he ran her on three occasions, two of which were 18 months apart, the Appellant said he was not targeting the owner, but the vehicle. He does not always get to the information on his phone write away, so he may have run it again. When he ran her the first time, he did find anything pending. He could not recall writing that she was smoking hot.

He ran [redacted] three occasions since she was a friend and was operating a business where she was having problems with the homeless. He had given her his number and told her if she had any issues with them, to give him a call. Since she had a birthday coming up, he thought it would be nice to send her flowers and so he used the system. He knew using the Department's computer system for personal gain was against policy, but in his mind that was not what he was doing.

The Appellant stopped [redacted] after her vehicle took off from an intersection at a high rate of speed. After she said her parents would be mad, he gave her his card and said if they wanted to confirm what had happened, to give him a call. About two months later she contacted him and they ended up going out. Believing she had an outstanding ticket, [redacted] asked that he run her license to see if it was suspended. He did so several times not thinking he was doing anything wrong, since he was doing it for a friend. The Appellant denied telling [redacted] he would get rid of her ticket. The text he sent meant that he was going to amend and not make it

disappear. He understood the purpose of the counseling with Clay after this incident was to make him change his ways. He admitted the contact with [redacted] occurred after this counseling.

As to the administrative rights notice, no one told him anything more about what was going on beyond that which was on the form, including that he was being investigated regarding his interaction with [redacted] or his use of the computer. He believes his conduct was consistent with Department policy, but that he could have done things differently. Going forward he would not provide his cell phone number, but there was no policy back then prohibiting it. He acknowledged being aware of the policies prohibiting the use of Department computers for personal business. He admitted to Charge 1 sections (a), (b) and (d); both sections of Charge 2, and sections 3 (b) and 3 (c) of Charge 3 in his discharge letter of February 12, 2015 (Dept. 2).

POSITION OF THE PARTIES

It is the Department's position that the Appellant engaged in multiple acts of misconduct as a Deputy Sheriff which included: 1) inappropriate acts with female civilians while on duty; 2) misuse of the Department's computer equipment; 3) dereliction of duty by not appearing in court and, 4) by repeatedly engaging in behavior which brought discredit on the Department. Even though the Appellant admitted the majority of the allegations were true, he still refuses to believe his behavior was inappropriate. He was less than candid as to how and why he acted the way he did. The character witnesses he offered had little relevance to his misconduct.

Even after being put on notice, he continued to mishandle traffic citations and run women through the Department's computer without any legitimate law enforcement purpose. He abdicated his responsibility as an officer by failing to show up in court with the goal of ensuring citations were dismissed. Testimony was presented as to the inappropriateness of telling someone he was not be going to court after issuing a ticket and that he knew the Department's

computer system should only be used for law enforcement purposes. As to his encounter with [redacted] in the public park, there was the possibility that others could have witnessed the sexual contact.

The Appellant's discharge was appropriate in that his conduct resulted in serious harm to public service and trust with the Department. As a deputy sheriff he was expected to meet higher standards of performance and behavior. His conduct was intentional, occurred on multiple occasions, and brought discredit on the Department. He engaged in a pattern of targeting young females and predatory behavior which exposed the Department to liability. Even if there is not a specific written policy, an officer is expected to exercise sound judgement and act honorably at all times. The excuses he gave were neither credible nor supported by the evidence.

As to the second and third charges, the Appellant failed to perform his job when he promised not to appear in court. Such behavior was unexpected from one with such a long tenure and training history. The Appellant misused the Department's computer when he ran three women on thirteen different occasions to establish personal relationships even though he had previously been instructed not to do so without a law enforcement purpose. Forming a relationship and promising not to go to court was an obstruction of justice.

There was no *Skelly* due process issue given the Appellant had received notice and an opportunity to respond to the charges. LaBerge's comments about the Appellant being predatory were not new charges, just other words to describe the behavior noted in the Letter of Imposition. The 2011 incident was referenced in the Investigative Summary which was given to the Appellant as part of the *Skelly* process.

As to the POBRA affirmative defense, there was no such violation in that the Department was entitled to rely on the prior counseling associated with the [redacted] incident. Even without

referring to the same, there was other sufficient evidence about the inappropriateness of his handling citations. It was not a new charge. If there was a due process issue, it was harmless. Section 3303 only provides that one be informed of the nature of the investigation and not all the detailed specifications. He knew the behavior being investigated involved his interactions with citizens during traffic stops. The Department was not required to limit its questions so as to close off other areas of inquiry, which might reveal additional or related misbehavior.

The discipline was appropriate given his earlier failures to adhere to policy and that there was a significant risk his misconduct would reoccur resulting in harm to public service. Even though claims from the public were not pursued, his actions could have exposed the Department to civil liability. His ongoing and repeated behavior demonstrated that he lacked the attributes and qualities to be a law enforcement officer.

The Appellant believes the Department failed to prove its allegations and as such, the discharge should not be sustained. There was a violation of due process in that a number of the Department's assertions were not in the discharge letter and/or exceeded the statute of limitations. Some of the evidence it presented related to unfounded, uncharged, and unreliable allegations which had not resulted in discipline including: the 2007complaint by the Custody Assistant, the 2011 complaint by [redacted], the canvass results, and the reputation evidence presented by [redacted]. The consideration of the first two used by the Department as having been representative of a pattern of behavior was beyond the statute of limitations.

The character evidence offered to prove his conduct on a specific occasion was inadmissible. LaBerge's disciplinary determination was based on his belief the Appellant had been involved in a pattern of targeting young females, and/or that he had given them his phone number. The Department provided only hearsay evidence and there was no comparative

evidence he was targeting females. The single [redacted] incident did not constitute a pattern. The documentation introduced in an attempt to prove the same was missing a number of citations.

The policies he was alleged to have violated in support of the first charge were vague and ambiguous as well as arbitrary and discriminatory in their enforcement. LaBerge testified there was no policy prohibiting the establishment of a relationship with an individual after a citation issue had been resolved. The Appellant actions in not attending traffic court were consistent with Department's practice for those in crime cars. He had not gone to court in seven years. If the Appellant had gone, he would have been less productive in reducing crime and left the field shorthanded. As to the assertion of lewd conduct raised in the fourth charge, there was no evidence that any member of the public was present at the time.

His rights under POBRA were violated when he was not given notice of the nature of the investigation prior to his interrogation even though the Department was aware of his interactions with [redacted], the use of the MDC and/or those assertions noted in the third charge of his disciplinary letter. [redacted]

DISCUSSION

After a full review of the testimony presented and evidence introduced, the record was sufficient to support the policy violations in the Appellant's discharge letter dated February 12, 2015 (Dept. 2). In addition, the Appellant fell short in trying to show there had been due process violations associated with *Skelly* or his rights under Public Safety Officers Procedural Bill of Rights Act. As a result some type of disciplinary action was appropriate.

Section 3-01/030 General Behavior and Section 3-01/000.10 Professional Conduct

The Department's policy on "General Behavior" requires that one "not act or behave privately of officially in such a manner as to bring discredit upon himself or the Department." (App. O). It was undisputed that on October 29, 2012 the Appellant issued [redacted] a traffic citation and that as a result of that initial contact, entered into a personal relationship with her. There was insufficient evidence to show the Appellant had requested that she send him a naked picture of herself as the Department asserted. Between November and December of 2012 they did exchange texts and had a sexual encounter in his car in a public park where they kissed and he pulled up her blouse before biting her on the breast. The Appellant admitted to the same. In addition, he Appellant acknowledged the possibility he may have hurt her. Even though Castano believed there was no evidence of any "quid pro quo" and that the District Attorney's had concluded there had been no violation of Penal Code Section 243.4 (Sexual Battery by Restraint), such conduct was still inappropriate for a law enforcement professional.

As to the Appellant's assertion this particular charge was vague and ambiguous, it was true there appeared to have been no formal policy prohibiting the development of a personal relationship while on the job. Besides the Appellant, LaBerge, and Sauer testified that was their understanding as well. What was prohibitive was the qualification made by LaBerge. Even if there was no written prohibition against establishing a relationship, it was unacceptable to do so while [redacted] citation was pending. During her interview with Castano, [redacted] stated the Appellant had told her he would not show up in court. The encounter in the public park happened on December 5, 2012 and court date on the ticket was December 28, 2012 (Dept. 9). This was consistent with the Appellant's testimony that he believed the citation was indeed

still pending. Finally, Matthews testified the Appellant had acknowledged during their meeting that he should not have had the relationship.

A determination that carrying on a relationship before the ticket had not been fully processed was an obstruction of justice, as characterized by LaBerge, was not necessary to show the Appellant's behavior was unprofessional. As Sauer, the Appellant's own witness, noted during his testimony, the Appellant's conduct was counter to what was to be expected of an officer. Although there may or may not have been members of the public present, engaging in sexual activity in a public place with a person, who still had a citation pending, brought discredit upon the Appellant and the Department. Such behavior which were inconsistent with the core values and mission of his employer.

Section 3-0/050.10 Performance to Standards

This policy requires that one perform his duties "in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the objectives of the Department" (App. O). A violation would occur if one was unwilling or unable to perform his assigned tasks. The record supports the Department's assertion that on two separate occasions the Appellant failed in this regard when after issuing citations and told the recipients he would not show up at their court hearing. [redacted] testified the Appellant told her this on several occasions. During his testimony and/or during his interview the Appellant admitted to telling both [redacted] and [redacted] their citations would be dismissed, if he did not show.

The Appellant's argument that the policy regarding whether one was required to go to traffic court was vague and ambiguous was not persuasive. It was his assertion that those assigned to a crime car were not required to do so and that he had never attended court before. His position was supported by the evidence. He testified he had not been to court, but then said

he would only go if subpoenaed. During his IAB interview he admitted to seeing his name posted on the traffic court appearance paper, yet still chose not to appear (Dept. 4 p. 13 & 18).

The more troubling point of this allegation was telling the two citation recipients that by him not going to court, their tickets would be dismissed. Besides the statements of these two women and his admission to having said the same, the Appellant also acknowledged during his ICIB interview that such behavior was improper, noting that it was contrary to Department policy and the law to make an agreement (Dept. 4 p. 13). Sauer, Matthews, and Skaggs all agreed it would be inappropriate to issue a ticket and then later tell the recipient they were not going to show up in court. Despite the Appellant's assertions to the contrary, the Department's policy on this subject "emphasizes the importance of court appearances by unit personnel" (Dept. 32).

The Appellant's argument if had he gone to court, the field would have been shorthanded and/or he would not have been as productive in preventing crime, was not his call to make. A deputy does not have the right to unilaterally make such an operational decisions (Dept. 32 & 45). If he had such a concern prior to just deciding not to go to court or adjusting a ticket, he should have raised it with his superiors.

The Appellant had problems in this area before. He was told after a complaint was filed by another female driver back in 2011 that he was not to engage in such contact with females and was given instruction how a ticket could be dismissed. In addition the Appellant did not explain what would be the purpose of writing a ticket if he had no intention of seeing it through, an obligation recognized by Matthews during his testimony. Skaggs, again his own witness, could not think of a reason why one would issue a ticket knowing he was not going to show up.

Even if one were to believe the Appellant's explanation as to why he never went to court, he did not sufficiently explain why he would even give these women his contact information if he was not going anyway. Even though he had been previously instructed by Clay not to do so, it was unclear if there was a formal policy prohibiting the giving out of personal cell phone information. Whether one was allowed to do so was really not a determinative issue in this case. What was clear was that an officer was prohibited from giving someone a citation and then telling them he would not be going to court so as to get the ticket dismissed. The Appellant simply chose to ignore this responsibility, most likely in an attempt to try and establish a personal relationship with the two drivers.

3. Section 3-01/100.45 Use of Communications Equipment between 2008 and 2012

The weight of the evidence persuasively showed the Appellant used the Department's systems to obtain confidential driver's license and vehicle registration information on several females without a law enforcement purpose. There was no doubt this standard was well understood by those who worked in the Department, including the Appellant. He admitted to having been trained on the use of equipment and other policies, including the prohibition against doing so for personal gain (Dept. 22 – 28 and 33). During his interview with Matthews, the Appellant acknowledged that using the MDC system for social or unofficial purposes would be inappropriate (Dept. 32). In addition, several of his co-workers, including Skaggs and Sauer, acknowledged the same prohibition. Aaticano, another one of his witnesses, agreed it would be unacceptable to serially run someone through the Department's computer. Even though he admitted to accessing the system to look up the three individuals named in the discharge letter, the Appellant continued to insist that he was not doing so for personal reasons.

The explanations the Appellant gave for using the system on these occasions were both inconsistent with other representations he made and other evidence in the record. As to why he did so for [redacted] the Appellant said her birthday was coming up and he wanted to send her flowers. He did not explain why the dates he ran [redacted] were so far apart and months from her birthday. By putting forth such an explanation, the Appellant admitted the only reason he accessed the system was personal in nature. His other explanation, that he ran [redacted] on three occasions since she was a friend running a business who was having problems with the homeless, also did not support any law enforcement purpose. There was no nexus between the two. If there was an issue with someone outside of her business, one would suspect the officer would have run the background on that individual, instead of repeatedly doing so on the owner of the business. The Appellant's explanation that he was not doing anything wrong because he was running the search for a friend defies logic and was yet another admission that the access was only for personal reasons and not related to any of his law enforcement responsibilities.

His explanation as to why he looked up [redacted] on six (6) of the seven (7) different occasions was also not persuasive. Only the initial stop, when her vehicle took off from an intersection at a high rate of speed, was for a law enforcement purpose. He then gave her his personal information and they ended up going out. On the later occasions, the Appellant said he accessed the system at her request to see if she had an outstanding warrant. It is hard to believe that would have been a concern during the entire four year period (2008 – 2012) when he ran her on these multiple occasions. Regardless, each of the latter searches were also admittedly done for personal reasons.

The explanations the Appellant gave as to why he ran [redacted] on three different times was the most unbelievable of all. The Appellant said he was being proactive during his off-

duty hours and only targeting the vehicle when he saw it in a park where he exercised. The Appellant though had no explanation as to why he wrote on in his personal cell phone that she was "smoking hot." If he was truly checking just the vehicle, he also did not explain why he ran [redacted] several more times some eighteen months apart and after he had cleared her the first time. His testimony that he may have misrun her or forgot that he did so and then did it again was simply not credible when compared to the timeline and the personal comments he made about her on his phone. There was no indication any of the searches he did on [redacted] were made in furtherance of some law enforcement purpose. They too were strictly personal in nature and prohibited.

4. ***Section 3-01/030.07 Immoral Conduct***

The Department's assertion that on December 15, 2012 the Appellant engaged in lewd conduct in his vehicle in a public park and that it constituted immoral conduct was also supported by the evidence. In addition to the details provided by [redacted] during her interview with investigators, among other sexual contacts the Appellant admitted to were being groped and then exposing and biting [redacted] on her breast (Dept. 10). The Appellant's position that the threshold for violating this policy standard was the same as the criminal statute regarding lewd conduct was incorrect. One of the elements for such a crime did seem to require the presence of "someone else who might have been offended" and that the conduct must have been actually seen by someone (App. M). Although there was no evidence he was actually observed during the sexual encounter, the standard expected of a deputy is higher than these criminal prerequisites. Whether or not he was actually seen was not determinative. This policy required one to "maintain a level of conduct in their personal and business affairs which is keeping with the highest standards of the law enforcement profession." It also prohibits activity which can

include an incident of moral turpitude "which causes the Department to be brought into disrepute" (App. O). Engaging in such sexual behavior in a public park fell short of such an expectation. As LaBerge noted, even if there is not specific written policy, an officer is expected to exercise sound judgement and act honorably at all times.

Appropriateness of the Discipline

As LaBerge correctly noted, the Appellant was working in a position with significant authority and dependent on public trust. He was a tenured employee and aware of the various Department policies and procedures. Besides having signed off on a number of policy acknowledgements, back in 2011 the Appellant was counseled how he should not give out certain personal contact information and how to issue citations (Dept. 36). The Appellant admitted the purpose of the counseling session he had with Clay after the [redacted] incident was to make him change his ways. Still he went on to engage in the inappropriate behavior cited in the discharge letter. Even Sauer agreed if a lieutenant had counseled someone and that person did not change his behavior, he would expect the discipline to be escalated to something more severe.

[redacted]

Skelly and POBRA

The Appellant argued his rights under POBRA were violated when he was not given notice of the nature of the investigation prior to his interview and because the Department had exceeded the statute of limitations in trying to discipline him for an incident which occurred in 2011. As an affirmative defense, the Department was correct in asserting it was the Appellant's burden to prove there had been such a violation. A review of the record showed he fell short in that regard.

The "Administrative Rights" form he was given prior to his interview put him on notice that the investigation concerned his "performance and conduct while assigned to Palmdale Station, including but not limited to, your contact with the public during traffic stops" (App. Q). Each of the charges in the discharge letter were related to and/or arose out of such contacts (Dept. 2). They included the interactions he had with [redacted] Even though the use of the MDC system for personal purposes while on duty was not specifically mentioned, it was related. The notice he was given was sufficiently specific and there was no need for the Department to disclose each and every minor detail.

The Appellant's argument that he was also not afforded his rights under POBRA due to statute of limitations having run was also not supported by the record. The incidents regarding [redacted] in 2011 and his interaction with the daughter and the wife of another County employee were not presented as any new charge, rather they were introduced used to show the Appellant had already been put on notice that such conduct was inappropriate and that he should not repeat the same. The Appellant did not deny the conversation he had with Clay. His argument that their discussion should not have been referenced/used because it was not formal discipline was incorrect. It is true that a "Performance Log" is meant to document "counseling sessions" and does not "constitute formal commendation or discipline," however, if one were to accept the

Appellant's rational and always exclude any such references, then the Department might never use counseling as a tool to train and/or modify one's behavior and instead would only rely on formal discipline on every such occasion (Dept. 36). Besides being contrary to the stated purpose for such meetings, such an exclusive protocol would unnecessarily be detrimental to the careers of officers and would not be a productive supervisory protocol.

The Appellant's argument that he was not afforded his due process rights under *Skelly* was also not supported by the evidence. The Appellant was given sufficient notice and an opportunity to respond to all of the charges and the reasons for his discharge. LaBerge's response that he believed the Appellant's actions had been predatory in targeting young females was no more than another way to characterize the conduct and not a new charge. The disposition sheet he was given during the *Skelly* process indicated there had been a pattern of inappropriate conduct in stopping young females and then offering to get tickets removed (Dept. 3).

There was no requirement to charge one with dishonesty before taking into consideration such a characterization. Standing alone, whether or not a charged employee is credible is a factor a decision maker often takes into account when considering to accept that person's version of the events.

FINDINGS OF FACT

1) The Applicant had fourteen years of service with the Department.
2) [redacted] 
3) After issuing [redacted] a traffic ticket on October 29, 2012 the Appellant told her he was not going to show up on her court date in order that the citation would be dismissed.

4) While the ticket was still pending, he met [redacted] in a public park where they engaged in sexual activity.

5) The Appellant did not ask [redacted] to send him a naked picture.

6) The Appellant issued a traffic citation to [redacted] and told her on several occasion that he would not to show up to court. The Appellant did not appear on either of her court dates.

7) Despite having been instructed by Clay not to give out his cell phone number and how to properly void or correct a ticket, the Appellant subsequently gave his personal number to both [redacted] to establish a personal relationship.

8) Even though he was assigned a "crime" car, the Appellant still had a duty to go to court.

9) The Appellant performed a computer search on [redacted] on January 15, 2011, August 7, 2012 and October 21, 2012 even though there was no legitimate law enforcement purpose. He also noted on his personal cell phone that she was "hot."

10) The Appellant performed computer search on [redacted] on December 16, 2008, June 14, 2010, and April 10, 2011 for personal reasons and with no legitimate law enforcement purpose.

11) The Appellant performed a computer search of [redacted] on several different occasions between October 10, 2008 and October 18, 2012 for personal reasons and with no legitimate law enforcement purpose.

12) The Appellant admitted to having been aware of the prohibition against using the Department's computer for personal reasons.

13) The Appellant was notified of all the reasons for his discharge consistent with *Skelly* and given an opportunity to respond.

14) The Department did not solely rely on hearsay evidence in making its disciplinary decision.

15) None of the charges relied on by the Department exceeded the statute of limitations.

16) The Appellant was given notice of the matters being investigated prior to his interview.

17) Prior to the present allegations, the Appellant signed off on a "Watch Commander's Service Comment Report" which indicated he failed to perform up to standards where he told a female motorist he would "get rid of the ticket" and asked her to send a picture of herself.

18) The Appellant violated all of the policy sections noted in the discharge notice: Section 3-01/030.5 "General Behavior," Section 3-01/000.1- "Professional Conduct," Section 3-01/050.10 "Performance to Standards," Section 3-01/100.45 "Use of Communication Equipment," and Section 3-01/030.07 "Immoral Conduct."

19) The discharge was consistent with the Department's disciplinary guidelines.

CONCLUSIONS OF LAW

1. The allegations contained in the Department's Letter of February 12, 2015 are true.
2. The Department did not violate the Petitioners pre-deprivation due process (Skelly) rights.
3. There was no violation of the Public Safety Officers Procedural Bill of Rights Act, Government Code Section 3304(d).
4. The decision to discharge the Appellant was appropriate.

RECOMMENDATION

It is recommended that the Appellant's discharge be sustained.

Dated: June 22, 2016



County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



JIM McDONNELL, SHERIFF

February 12, 2015

Deputy Humberto Loza, [redacted]

Dear Deputy Loza:

On January 16, 2015, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2326158. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on February 11, 2015.

An investigation under File Number IAB 2326158, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct, on or about December 5, 2012, while off duty, you knowingly met with a citizen you had issued a citation to and engaged in undesirable and/or unprofessional conduct, and/or sexual activity, while the court case for the traffic citation was still pending, thereby bringing discredit upon yourself and/or the Department, and/or such conduct conflicted with the Department's Core Values, Mission, and/or Creed, and as such embarrassed yourself, and/or the Department, as evidenced by, but not limited to:

a. issuing a traffic citation to complainant [redacted] on October 29, 2012; and/or,

b. exchanging text messages for personal purposes with the complainant between November of 2012, and December 5, 2012; and/or,

c. requesting complainant to send you a naked picture; and/or,

d. meeting with the complainant and engaging in sexual activity in a vehicle parked in a public park while members of the public were present.

2. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, between April 2012, and December 2012, on two separate occasions, after issuing traffic citations, you showed an unwillingness or inability to perform assigned tasks when you agreed to not show up to the driver's court hearing, as evidenced by, but not limited to:

a. issuing a traffic citation to complainant on October 29, 2012, and promising complainant that you would not appear at the court hearing so that the citation would be dismissed; and/or,

b. issuing a traffic citation to [redacted] (referred to as [redacted] and promising that you would not appear at the court hearing so that the citation would be dismissed.

3. That in violation of Manual of Policy and Procedures Section 3-01/100.45, Use of Communications Equipment, between 2008 and 2012, you used Sheriff's Department communications systems for personal, social, or unofficial purposes, when you obtained confidential driver's license and vehicle registration information on several females for no legitimate law enforcement purpose, as evidenced by, but not limited to:

a. performing a computer search of [redacted] on January 15, 2011, August 7, 2012, and October 21, 2012, for no legitimate law enforcement purpose, and

transferring the information obtained to a personal cell phone device; and/or,

b. performing a computer search of [redacted] on December 16, 2008, June 14, 2010, and April 10, 2011, for no legitimate law enforcement purpose; and/or,

c. performing a computer search of [redacted] seven times from October 10, 2008, until October 18, 2012, for no legitimate law enforcement purpose.

4. That in violation of Manual of Policy and Procedures Section 3-01/030.07, Immoral Conduct, on or about December 5, 2012, you engaged in lewd conduct while parked in a vehicle in a public park while members of the public were present.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

CHIEF JACQUES A. LA BERGE
NORTH PATROL DIVISION

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

JAL:EMS:DLM:jp

cc: Advocacy Unit
Chief Jacques A. La Berge, North Patrol Division
Don P. Ford, Captain, Palmdale Station
Internal Affairs Bureau
Judy A. Gerhardt, Captain, Personnel Administration
Doreen Garcia, Pay and Leave Management